

REMARKS

Claims 1-32 are pending in the present application. In the above amendments, Claims 1-4, 6-10, 12, 15, 17, 19 and 26 have been amended. Claims 30 and 31 have been canceled without prejudice.

Applicant thanks the Examiner for allowing Claims 14, 18, 22-25, 28 and 29.

Claim 1 has been amended to clarify the elements of the “system.” No new matter was added. The “signal strength indicator” of Claim 1 was previously presented in Claims 30 and 31 in Applicant’s last Office Action Response. A “signal strength indicator” 122 is also shown in Fig. 1 and described in paragraph 1018 on pp. 6-7 and paragraph 1023 on p. 8 of the specification. A “system 100” using “code division multiple access (CDMA)” is described in paragraphs 1015 and 1016 on pp. 5-6.

The “Response to Arguments” on p. 2 of the Final Office Action stated Magnusson “discloses the high-rate data system being selected. Magnusson also teaches using several other parameters to select a system, such as loading. ... Magnusson ... teaches an example whereby the processor/DBO selects optimal means for exchanging data based on the user’s selected application” (emphasis added).

Magnusson is not relevant to Applicant’s independent Claims 1, 6, 12, 17 and 26 because these Claims do not recite “select” or “selecting” anything. In contrast, these Claims recite “detect” or “detecting” “when a wireless mobile unit is in a high data rate, code division multiple access (CDMA) area” and “automatically exchange said data between said wireless mobile unit and said base station at a high data rate using code division multiple access,” which are not disclosed or taught by Magnusson.

The Final Office Action rejected Claims 1-3, 5-9, 11-12, 16, 20-21, 26 and 32 under 35 U.S.C. § 102(b) as being anticipated by Magnusson et al. (WO99/49690).

The Final Office Action rejected Claims 4, 10, 13, 15, 17, 19, 27, 30-31 under 35 U.S.C. § 103(a) as being unpatentable over Magnusson et al. (WO99/49690).

First, Magnusson does not disclose a “signal strength indicator configured to detect when a wireless mobile unit is in a high data rate, code division multiple access area (CDMA) area by determining whether a strength of a high data rate carrier signal broadcast by a base station

exceeds a predetermined level,” as recited in Claim 1. The “signal strength indicator” of Claim 1 was previously presented in Claims 30 and 31 in Applicant’s last Office Action Response.

The Final Office Action (page 9) acknowledged that Magnusson is “silent” on a “signal strength indicator” in Claim 30. But the Final Office Action rejected Claim 30 by taking “Official Notice,” without citing any specific published reference, that “signal strength indicators” are “well known” to “determine if/when a mobile has roamed into an area served by another BTs.”

The “signal strength indicator” of Claim 1 is not disclosed by Magnusson and is not well known in the art. Magnusson does not disclose a “signal strength indicator” that determines “whether a strength of a high data rate carrier signal broadcast by a base station exceeds a predetermined level,” as recited in Claim 1. Instead, Magnusson (p. 5, lines 8-30) teaches a base station that transmits “Cell Broadcast Information” “about the momentary allocation of resources of the network and loading locally for just that cell.” There is nothing in Magnusson that determines “whether a strength of a high data rate carrier signal broadcast by a base station exceeds a predetermined level,” as recited in Claim 1.

In addition, Magnusson does not disclose or teach “high data rate, code division multiple access (CDMA),” as recited in Claim 1. Magnusson only describes “GSM-systems” (p. 3, lines 9 and 15; p. 4, lines 7 and 26; p. 7, line 2), which teaches away from CDMA. For these reasons, Applicant respectfully submits that Claim 1 and its dependent Claims 2-5 are allowable.

Second, Magnusson does not disclose “a data burst optimizer configured to automatically exchange said data between said wireless mobile unit and said base station at a high data rate using code division multiple access when the signal strength indicator detects said wireless mobile unit is in said high data rate, code division multiple access area,” as recited in Claim 1. There is nothing in the text or figures of Magnusson that discloses the “a data burst optimizer” of Claim 1. For this reason, Applicant respectfully submits that Claim 1 and its dependent Claims 2-5 are allowable.

For Claim 2, the Final Office Action stated Magnusson teaches “selecting the optimal carrier service” (emphasis added). There is no “selecting” in Claims 1 and 2, so Magnusson is not relevant to Claims 1 and 2. Claim 1 recites a “data burst optimizer configured to automatically exchange said data ... when the signal strength indicator detects said wireless

mobile unit is in said high data rate, code division multiple access area, and the processor determines a need for exchanging data between the wireless mobile unit and the base station.” Claim 2 recites “said processor invokes said data burst optimizer to automatically exchange said data ... when said wireless mobile unit is in said high data rate CDMA area.” Magnusson does not disclose or teach these “automatically exchange” limitations of Applicant’s Claims 1 and 2.

For Claim 3, the Final Office Action rejected Claim 3 by citing p. 5, lines 16-35. But these lines do not disclose a “data burst optimizer ... configured to continuously detect when said wireless mobile unit is in said high data rate CDMA area,” as recited in Claim 3. The Final Office Action does not cite any other published reference, and thus uses impermissible hindsight to reject Claim 3.

For Claims 4, 10, 13, 15, 17, 19 and 27, the Final Office Action (pp. 2 and 6) does not cite any specific published reference to show a motivation to combine the elements of these Claims with the elements of their base Claims. For example, the Final Office Action does not cite any specific published reference to show a motivation to combine the elements of Claim 4 with the elements of Claim 1. Thus, the rejection of Claims 4, 10, 13, 15, 17, 19 and 27, without citing specific published references, is based on impermissible hindsight after reading the Claims themselves.

For Claim 5, the Final Office Action cited page 5, lines 16-35, of Magnusson in rejecting Claim 5, but nothing in these lines teaches a “data burst optimizer ... configured to stop exchanging said data between said wireless mobile unit and said base station when said wireless mobile unit is not in said high data rate area.” The Final Office Action makes an assumption that “said DBO is configured to stop exchanging said data ...,” but this text is not in Magnusson. There is no “DBO” mentioned on p. 5 of Magnusson or shown in the figures, so the rejection of Claim 5 is unclear.

Claims 6-13, 15-17, 19-21, 26, 27 and 32 should be allowable for at least the reasons stated above.

REQUEST FOR ALLOWANCE

In view of the foregoing, Applicant submits that all pending claims in the application are patentable. Accordingly, reconsideration and allowance of this application are earnestly solicited. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Respectfully submitted,

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